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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1430

HAROLD BENEDICT, LOCAL 241, COUNCIL 44, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; VIRGINIA KING; MILLIE ADAMS; NONA ROWDEN; RUTH MONROE; MARY KELLY; SALLY SCHOAF; EVELYN DEFREITAS; ELEANOR LARGENT; CHERRY BUCHANAN; DOROTHY SUDDETH; SHARON STEAR; ROBERT HOOPER and RUTH HINNERS,
Petitioners,

vs.

COUNTY OF PEORIA,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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INDEX

	Page
Table of Cases	i
Question Presented	2
Statement of the Case	2
Reasons for Denying the Writ	5
Conclusion	9

Table of Cases

Board of Education v. Redding, 32 Ill. 2d 567 at 571	9
Carroll v. Commissioners of Princess Anne County, 393 U.S. 175, 21 L.Ed.2d 325, 89 S.Ct. 347	8
Faris v. Faris, 35 Ill. 2d 305	6
Freedman v. Maryland, 380 U.S. 51, 13 L.Ed. 2d 649, 85 S.Ct. 734	8
Peters v. South Chicago Community Hospital, 44 Ill. 2d 22	9
Treines v. Sunshine Min. Co., 308 U.S. 66, 84 L. Ed. 85, 60 S.Ct. 44	6
United States v. United Mine Workers, 330 U.S. 258, 293, 91 L.Ed. 885	6
Walker v. The City of Birmingham, 388 U.S. 307, 818 L.Ed. 2d 1210, 87 S.Ct. 1824	8

Statutes

Illinois Revised Statutes, Chapter 69, Section 1	5

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Respondent, County of Peoria, hereby respectfully prays that the petition for writ of certiorari by the petitioners for the review of the decision of the Supreme Court of Illinois entered in this cause on December 4, 1970, affirming the contempt sentences in the order of the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, in this cause entered on January 2, 1969, be denied.

OPINIONS BELOW

The decisions of the Circuit Court of the Tenth Judicial Circuit of Illinois entered on January 2, 1969 and of the Supreme Court of Illinois entered on December 4, 1970 are attached and appended to the petition.

QUESTION PRESENTED

1. Whether a party may ignore a court order claimed to be improper or unconstitutional before testing legality of the order by proper proceedings.

STATEMENT OF THE CASE

The County of Peoria operates the Bel-Wood Nursing Home for the benefit of residents of Peoria County pursuant to legislative enactment. During November, 1968, there were 236 patients residing in the home (page 30) of which 156 were bedridden and 80 were ambulatory (page 31). The charge made, or the patient rate for the care is determined by the total cost of running the home divided by the number of patients residing in the home (pages 7-8). For those patients who are indigent, care is provided by public funds.

The non-supervisory employees of the home are members of the Local 241, American Federation of State, County and Municipal Employees International Union. During the latter part of 1968 the members of the union and the nursing home committee of the County Board of Supervisors for Peoria County had discussed the wage scale for the forthcoming year, 1969. Mr. Harold Benedict, the business agent (page 106), for Local 241 and members of his committee rejected the offers made by the nursing home committee of the County Board of Supervisors as insufficient (pages 84-85, 130). Around November 15, 1968, Mr. Harold Benedict made public pronouncements by way

of newspaper and television that unless the demands of the union were met, the Local 241 would go on strike commencing midnight, November 30, 1968 (pages 76, 87). Of the 104 employees of the hospital, which includes the nursing staff, 88 were members of the union (page 31).

On November 27, 1968 at 3 P.M., Nina Kerley, the secretary-treasurer of Local 241, and Harold Benedict received notice of a hearing on a complaint for an injunction by the County of Peoria, set for Friday, November 29, 1968 at 10 A.M. (C-2) requesting an order enjoining the union and individual members from work stoppage and picketing at the Bel-Wood Nursing Home. Telephonic notice to Nina Kerley was followed by actual service of the complaint for injunction and notice of hearing on November 27, 1968 (C-3).

On November 29, 1968, at 10 A.M. when the defendants failed to appear for the hearing, the Court considered the verified complaint of the County of Peoria (C-11–C-16), and ordered the Clerk of the Circuit Court to issue an injunction writ commanding the Local 241 and the individual defendants to:

> "restrain from conducting a strike against the County of Peoria; that you are jointly and severally enjoined from conducting any walkout or work stoppage at the Peoria County Nursing Home; from setting up any picket lines at or near or upon the property of the Peoria County Bel-Wood Nursing Home in Peoria County" (C-18).

The service of the injunctive writ and a copy of the complaint for injunction were served upon all the defendants before November 30, 1968 (C-20–C-102), with a written warning included in the injunction that failure to obey the temporary injunction would subject them to punishment for contempt of the court.

No motion to vacate the temporary injunction or motion to discharge the injunction was filed by any of the petitioners before the members of the union on duty November 30, 1968 walked off the job and set up picket lines on the nursing home property (pages 62, 65). During the week that followed, none of the members of the union reported for work (page 94). As the strike continued, the picketers obstructed and harassed volunteers who appeared to care for the patients (page 83), placed railroad ties across the entrances to the nursing home property to obstruct traffic (page 82), and threw roofing nails on the driveways into the property (pages 82 and 98). The picketing activity took place on the premises of the Bel-Wood Nursing Home (page 62). Harold Benedict, the business agent, was observed at the picketing activities (page 97), and indeed, admitted encouraging and advising the pickets (pages 106-107).

On December 3, 1968, the County filed a Petition for Rule to Show Cause why Local 241 and individual defendants should not be held in contempt of court and petition was granted setting the hearing on the order to show cause for December 6, 1968 (C-104–C-107). A lengthy conference was held on December 6, 1968, at which the defendants' attorneys were present (page 115), and an interim order was entered by the Court providing for a skeleton crew of union members at the home and limiting the number of pickets until such time as the Rule to Show Cause could be heard. Provision was also made for time for the defendants to file motions attacking the temporary order.

The County having filed a motion to make the temporary injunction permanent, the Court held a hearing on that motion on January 2, 1969 and thereafter held a hearing on the Rule to Show Cause. On the motion to make the temporary injunction permanent, seven witnesses were presented by the County and one witness was presented on

behalf of the petitioners. The Court having heard the evidence entered an order making the temporary order permanent. The Court then proceeded with a hearing on the Rule to Show Cause, but first granted the petitioners a trial by jury which they waived. Nine witnesses were called by the County and no witnesses were called by the petitioners. The Court having heard the evidence found Local 241 to be in contempt of the November 29, 1968 order and assessed a fine. Harold Benedict was held in contempt of the same orders and was given a fine and a jail term. The other appealing petitioners were assessed a fine until they complied with the permanent injunctive order entered on January 2, 1969.

On an appeal to the Supreme Court of Illinois, the Court issued its opinion on December 4, 1970, holding that the permanent injunction was invalid under Illinois' Anti-Injunction Act (Ill.Rev.St., Ch.48, Sec.2a) which prohibited the issuance of injunctions in labor disputes but upheld the sentences for contempt of the temporary injunction dated November 29, 1968.

REASONS FOR DENYING THE WRIT

The whole purpose of the temporary or preliminary injunction is to maintain the status quo. The petitioners attacked the propriety of that order as a violation of the Illinois Anti-Injunction Act. The Court had the jurisdiction to enter a temporary injunction (Ill. Rev.St., 1969, Ch.69, Sec.1), but the issue was whether the Anti-Injunction Act limited the use of the power. Briefs were filed by each party over a period of time on that point. The Trial Court could have waited until after the briefs and authorities were submitted to determine the propriety of the issuance of the order, but it is obvious that the status quo would not have been maintained. More than 200 patients, many of who were bedridden, were without care when the employees walked out except for the few volun-

teers who came to help. Those patients who could not do for themselves had to be fed and clothed whether or not a labor dispute existed between the home and its employees. From the record, the Trial Court's first interest was an attempt to resolve the dispute between the parties without making the patients of the Bel-Wood Nursing Home pay the price of deprivation of care. A strike, while the Court determined the application of the Illinois Anti-Injunction Act, could wait, but surely the care of these 156 bedridden patients could not wait. The only way to preserve the existing conditions while the Court determined the petitioners' right to strike was to issue a temporary or preliminary injunction.

This Court used the same rationale in **Treines v. Sunshine Min. Co.**, 308 US 66, 84 L Ed 85, 60 S.Ct. 44. The Court was of the opinion that a violation of such a temporary order gave the Trial Court the right to punish the violation thereof as contempt.

The petitioners were given ample opportunity to appear at every stage, from the issuance of the preliminary order until the time it was made permanent. They did not appear, did not request a continuance for the purpose to obtain counsel to make an appearance before the temporary order was issued. They did not file a motion to vacate the order or to discharge it after it was entered. The petitioners attempted to excuse their conduct on the grounds that either the temporary order was erroneous or that it was unconstitutional in its application to them.

The Illinois Supreme Court, relying on **Faris v. Faris,** 35 Ill. 2d 305, found that the temporary order must be obeyed by the parties until it is reversed by orderly and proper proceedings, even without regard to the constitutionality of the order issued. This Court has long adhered to that proposition. **United States v. United Mine Workers,** 330 US 258, 293, 91 L.Ed. 885. Therefore, the constitu-

tional grounds for this petition, even if true, would not be a proper basis for review of the decision of either the Supreme Court of Illinois or the Trial Court. The petitioners ignored the Trial Court and its order and instead made their own collective decision of what the law was or ought to be, and freely, voluntarily and knowingly disregarded the preliminary injunction. Whether or not the order was erroneous or unconstitutional, it is their premeditated disobedience of the Court and its order which is punishable as contempt. The interest of our courts in the orderly administration of justice far outweighs the personal interests of these petitioners. What is left of society if anyone, for any reason, may choose to disregard any court order not to his liking?

Even those constitutional violations which the petitioners claim excused them from obeying the temporary order do not exist. No constitutional guarantees were denied the defendants when a temporary injunction was entered.

Petitioner Harold Benedict claims that his First and Fourteenth rights were violated when the contempt findings were based upon his union representation rather than his own conduct. He claims that the order against him was based solely on this union affiliation. This contention that he was not involved in the picketing activities has been presented now for the third time. It was the trial Court that heard the evidence and made a determination of fact. The Supreme Court of Illinois in affirming the contempt conviction of petitioner, Harold Benedict, stated "It is uncontroverted that defendant employees picketed in front and rear of the home on County property with signs stating that a strike was in progress; that Benedict was observed picketing at the home, and that he advised the pickets in their conduct." That conduct constitutes a violation of the temporary order. It is the same conduct on the part of other members of the union who had been served with the temporary injunction which caused them

to also be held in violation of the temporary order. A writ should not be issued by this Court to review an issue of fact.

Nothing in that order denies any petitioner the right to participate in union activities or to belong to a labor union organization. Nothing in that order violated his protected right of freedom of association. The petitioners' prior First Amendment complaints have been that the temporary order was an invasion of their right to freedom of speech. Just as this Court in **Walker v. The City of Birmingham,** 388 US 307, 818 L. Ed. 2d 1210, 87 S.Ct. 1824, held that communication by conduct does not enjoy the same privilege as communication by pure speech, neither does the freedom to associate protect all conduct while so associated. These petitioners could have appeared at the Court on the day that the temporary injunction was issued to make their objections. They had been given notice of the pending hearing and had been invited to participate in the proceedings. This is all that the amendments require. **Carroll v. Commissioners of Princess Anne County,** 393 US 175, 21 L. Ed. 2d 325, 89 S.Ct. 347; **Freedman v. Maryland,** 380 US 51 at 58, 13 L. Ed. 2d 649, 85 S.Ct. 734.

Likewise, the record does not support any violation of the guarantees of the Thirteenth Amendment to these petitioners. No one ordered them to work at the Bel-Wood Nursing Home and the injunction writ served upon each of the petitioners, as demonstrated by the record on page C-18, does not mention that the petitioners had to return to work. What they claim is, that the order signed by the Trial Court on November 29, 1968 directing the Clerk of the Court to issue the injunction writ contained some language concerning their return to work. The petitioners maintain that this language confused them although it is plain on the face of the order that the language was stricken from it by the Court and was never intended to be a part of the writ. Secondly, there was no testimony by

any of the petitioners that any of them saw the order signed by Judge Robert E. Hunt on November 29, 1968. How can they become confused by an order they didn't see until after they ignored it? The record firmly establishes however that each and every one of them received the injunction writ prior to the time they began the strike. If they had appeared at the hearing for the issuance of the temporary injunction any attack on it regarding alleged Thirteenth Amendment guarantees could have been made.

CONCLUSION

The petitioners claim that they did not have to obey the temporary injunction issued by the Trial Court because it was wrong. They have failed to advise the Court that at the time the order was entered it conformed with the decisional law of State of Illinois concerning strikes by public employees. It was more than a year after these petitioners walked off their jobs that the Supreme Court of Illinois altered its prior position and indicated that all public employees but teachers had the right to strike. **Board of Education v. Redding,** 32 Ill. 2d 567 at 571; **Peters v. South Chicago Community Hospital,** 44 Ill. 2d 22. At the very least, the petitioners thought the law prohibited strikes by public employees when they ignored the temporary order.

The petitioners now claim that properly they could ignore the temporary order because it violated the Thirteenth Amendment guarantees. The injunction writ served upon each of the petitioners prior to the commencement of the strike only prohibited striking and picketing. It did not force them to work and at any time they could terminate their employment. Their claim of the abridgement of that right is more sound than substance.

Petitioner Harold Benedict, the business agent for the union, also claims that his First Amendment rights of

freedom of association were violated by the order and therefore he could ignore the temporary order. Now, for the third time, he charges that there was no evidence of his conduct violating that order. Making that assumption, he continues that he was held in contempt merely because of his union association. A Writ of Certiorari may not be used to review a question of fact. The Trial Court held that he was indeed participating in the strike by his conduct as well as his words and the Supreme Court of Illinois found that the records supported the contempt citation on that ground. Harold Benedict was held in contempt because he wilfully ignored the temporary order when he participated in the strike activities.

This Court has held on many occasions that one may not ignore a court order where the court had jurisdiction of the person and the subject matter but must seek judicial review of it. None of the issues raised by the petitioners indicates that the Court was without jurisdiction to issue injunction writs or that the petitioners had not been forewarned of its issuance. They had been given an opportunity to participate in the hearing. The issues presented in the appeal do not warrant review by this Court. Therefore, the Respondent, County of Peoria, respectfully prays that the Court deny the Petition for Writ of Certiorari to review the decision of the Supreme Court of Illinois.

Respectfully submitted

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